

*United States Court of Appeals
for the Second Circuit*



APPELLEE'S BRIEF

74-2626

United States Court of Appeals
FOR THE SECOND CIRCUIT

JORDAN INTERNATIONAL COMPANY, *Plaintiff-Appellant,*
against

S.S. PIRAN, her engines, boilers, etc.,
and against

FEDERAL COMMERCE & NAVIGATION CO., LTD. and
SPLOSNA PLOVBA, *Defendants-Appellees.*
(69 Civ. 284)

EASTERN STEEL & METAL COMPANY, *Plaintiff,*
against

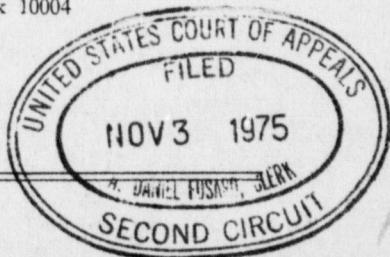
S.S. PIRAN, her engines, boilers, etc., SPLOSNA PLOVBA, and
FEDERAL COMMERCE & NAVIGATION CO., LTD., *Defendants.*
(69 Civ. 93)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

**BRIEF OF DEFENDANT-APPELLEE, FEDERAL
COMMERCE & NAVIGATION CO., LTD.**

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BRIEF OF DEFENDANT-APPELLEE, FEDERAL COMMERCE & NAVIGATION CO., LTD.

The only issue in this case was whether cargo should recover for water damage sustained when heavy seas stove in the steel cover to No. 1 hatch. After carefully considering the evidence, the Trial Court found there was no liability, a conclusion which we think was sound, and fully supported by the evidence.

Defendant Federal Commerce is involved in this dispute only in a limited sense. As time charterer, it took the vessel from the defendant owner, and issued bills of lading to cargo. If this Court should reverse the decision of the court below, liability would fall upon the defendant vessel owner, Splosna Plovba, for failure to exercise due diligence to provide a seaworthy ship. Federal Commerce would also be liable to cargo as the contract carrier. However, it was stipulated during the trial that any liability for unseaworthiness would be primarily that of the defendant vessel owner.

"Mr. Allen: I think that only leaves the one simple question as to the seaworthiness or unseaworthiness of No. 1 hold, and in that respect Mr. Ryan and I have agreed among ourselves that if you should find liability the vessel owner would be primarily liable and Federal would be secondarily liable.

The Court: Is that right, Mr. Ryan?

Mr. Ryan: That is correct, your Honor.

The Court: I think that is right.

Going back a step, the way I would see the issue, there would be the primary issue of the seaworthiness of the vessel. Now, what about the issue of the diligence of the vessel?

Mr. Allen: The due diligence is part of the seaworthiness.

Mr. Ryan: Yes, your Honor.

The Court: Then how about the peril of the sea?
How does that fit in?

Mr. Allen: That is in it too.

Mr. Ryan: That is part of it.

The Court: So that group of issues is really the
thing to be tried in the case?

Mr. Ryan: That is right."

(T.M. 199-200)

Conclusion

The decision of the court below should be affirmed, but
if there is a reversal, liability should be assessed in the
first instance against the vessel owner.

Respectfully submitted,

CICHANOWICZ & CALLAN

By DONALD B. ALLEN

A Member of the Firm

*Attorneys for Defendant-
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DONALD B. ALLEN
Of Counsel

(58902)

Due and timely service of TWO copies
of the within BRIEF is hereby
submitted this 31st day of OCTOBER 1975

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Attorney for APPELLANT
SPUSNA PLUMA

COPY RECEIVED

OCT 31 1975

HILL, BETTS & NASH

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OCT 31 1975

Bigham, Engwer, Jones & Weston